

FILED

OCT 19 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]*
DEPUTY CLERK

1 PHILIP C. HUNSUCKER (SBN 135860)
2 BRIAN L. ZAGON (SBN 142403)
3 MARC SHAPP (SBN 266805)
HUNSUCKER GOODSTEIN PC
3717 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549
4 Telephone: (925) 284-0840
Facsimile: (925) 284-0870

5 LEE N. SMITH (SBN 138071)
6 PERKINS, MANN & EVERETT, APC
7815 N. Palm Ave, Suite 200
7 Fresno, CA 93711
Telephone: (559) 447-5700
8 Facsimile: (559) 447-5600

9 Attorneys for Plaintiff
AMERIPRIDE SERVICES INC.

10 FRED M. BLUM (SBN 101586)
11 ERIN K. POPPLER (SBN 267724)
VIVY D. DANG (SBN 297714)
12 BASSI, EDLIN, HUIE & BLUM LLP
500 Washington Street, Suite 700
13 San Francisco, CA 94111
Telephone: (415) 397-9006
14 Facsimile: (415) 397-1339

15 Attorneys for Defendant
TEXAS EASTERN OVERSEAS, INC.
16 [Additional Attorneys Listed on Signature Page]

17
18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 AMERIPRIDE SERVICES INC., a
21 Delaware corporation,

22 Plaintiff,

23 vs.

24 VALLEY INDUSTRIAL SERVICES, INC.,
a former California Corporation, et al.

25 Defendants.

26 Case No. CIV. 2-00-113 MCE-DB

27 **STIPULATION AND ORDER RE
SUBMISSION OF EVIDENCE OF
AMERIPRIDE'S ADDITIONAL
RESPONSE COSTS**

28 Trial Date: October 17, 2016
Complaint Filed: January 20, 2000

29 AND CONSOLIDATED ACTION AND
CROSS AND COUNTER-CLAIMS.

1 Plaintiff AMERIPRIDE SERVICES INC. ("AmeriPride") and Defendant TEXAS
2 EASTERN OVERSEAS, INC. ("TEO"), by and through their respective counsel, stipulate
3 as follows with respect to response costs incurred and to be incurred by AmeriPride prior
4 to entry of judgment after the October 2016 trial but following the presentation of evidence
5 at trial of this remanded action:

6 **RECITALS**

7 1. The cleanup work at the site is ongoing. AmeriPride alleges that it continues
8 to incur additional response costs. AmeriPride's consultant regularly sends AmeriPride an
9 invoice for this work the month after the month in which the work was performed. Invoices
10 for regulatory oversight costs are typically sent to AmeriPride on a quarterly basis, and
11 cover the previous quarter;

12 2. After the Court's May 11, 2011 summary judgment order, ECF No. 735 at
13 46-47, the Parties stipulated on three different occasions to additional amounts AmeriPride
14 incurred for investigation and remediation, and regulatory oversight costs ("response
15 costs") that are recoverable under Section 107(a)(4)(B) of the Comprehensive
16 Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §
17 9607(a)(4)(B). ECF Nos. 864, 1017, and 1052. These stipulations were reached after
18 AmeriPride produced the invoices to TEO and TEO had the opportunity to review the
19 invoices;

20 3. In addition to the incurred response costs stipulated to as identified in
21 paragraph 2, AmeriPride sought to recover approximately \$782,000 in additional response
22 costs that AmeriPride incurred before the Court entered declaratory judgment against TEO
23 after the 2012 trial, but for which AmeriPride did not tender proof to the Court or to TEO
24 prior to the Court's April 20, 2012 Order. On July 13, 2016, the Court ruled on summary
25 judgment that AmeriPride cannot recover the approximately \$782,000 in additional
26 response costs (ECF No. 1039 at 23:1-24:12);

27 4. The same issue will present itself at the trial set for October 17, 2016.
28

1 Because the cleanup of the site is ongoing, AmeriPride continues to incur response costs
2 on a monthly basis. This means that there inevitably will be a gap between when the last
3 recoverable response cost proved at trial will have been incurred, and when the Court
4 enters its decision and then judgment after trial;

5 5. AmeriPride intends to produce to TEO invoices for additional response costs
6 incurred by AmeriPride after the latest time when AmeriPride is able to receive an invoice
7 for such costs and obtain proof that the invoice has been paid in time for the exchange of
8 trial exhibits on October 3, 2016 prior to the October 17, 2016 trial for TEO to evaluate and
9 to consider whether it is appropriate to enter a further stipulation as to the recoverability of
10 these costs under CERCLA Section 107(a)(4)(B).

STIPULATION

12 Based on the foregoing, AmeriPride and TEO, through their respective counsel of
13 record, stipulate as follows:

14 1. The Parties request the Court provide a reasonable amount of time not to
15 exceed thirty (30) days after the Court's decision following trial but before the Court enters
16 its judgment, for AmeriPride to provide to TEO, for TEO's evaluation, any additional
17 invoices for response costs which AmeriPride incurred after the latest time when
18 AmeriPride is able to receive an invoice for such costs and obtain proof that the invoice
19 has been paid in time for the exchange of trial exhibits on October 3, 2016 prior to the
20 October 2016 trial;

21 a. TEO will have fourteen (14) days from the date AmeriPride provides it
22 with proof of AmeriPride's additional response costs to evaluate whether
23 the costs are recoverable under CERCLA Section 107(a)(4)(B);
24 b. If TEO accepts AmeriPride's proof then the Parties will stipulate as to the
25 amount of additional response costs recoverable by AmeriPride under
26 CERCLA Section 107(a)(4)(B), as they previously have in this action;
27 c. If, after conferring in good faith, the Parties cannot agree to the amount of

1 additional response costs recoverable by AmeriPride under CERCLA
2 Section 107(a)(4)(B), the Parties request the Court permit the Parties to
3 each submit briefs that do not exceed seven (7) pages (not including
4 supporting evidence) for the Court to consider and resolve the dispute
5 before entry of the judgment;

6 2. For any response costs determined to be recoverable by AmeriPride
7 according to the procedures set forth in Paragraph 1 of this Stipulation, the amount of such
8 response costs shall be included in the Court's calculation of the response costs directly
9 incurred by AmeriPride and recoverable under CERCLA Section 107(a)(4)(B);

10 3. Any response costs incurred by AmeriPride after the last costs subject to
11 TEO's review pursuant to Stipulation Paragraph 1 herein and before the Court enters
12 judgment after the October 2016 trial are deemed to be "further response costs" subject to
13 the declaratory judgment provision in CERCLA Section 113(g)(2);

14 4. TEO's agreement to enter this Stipulation is not an admission nor may it be
15 used as evidence that the procedure set forth herein can or should be used on any future
16 occasion.

17 Date: October 5, 2016 BASSI, EDLIN, HUIE & BLUM LLP
18

19 By: /s/ Fred M. Blum
20 FRED M. BLUM
21 ERIN K. POPPLER
22 Attorneys for Defendant
23 TEXAS EASTERN OVERSEAS, INC.

24 Date: October 5, 2016 HUNSUCKER GOODSTEIN PC
25

26 By: /s/ Brian L. Zagon
27 PHILIP C. HUNSUCKER
BRIAN L. ZAGON
MARC A. SHAPP
28 Attorneys for Plaintiffs
AMERIPRIDE SERVICES INC.

1 Date: October 5, 2016

PERKINS MANN & EVERETT, APC

3 By: /s/ Lee N. Smith

4 LEE N. SMITH

5 Attorneys for Plaintiffs

6 AMERIPRIDE SERVICES INC.

7 **ORDER**

8 IT IS SO ORDERED.

9 Date: 10.19.16

10 
11 HON. MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE